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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN
THE LITTLE COLORADO RIVER
SYSTEM AND SOURCE

CV 6417-203

ORDER REGARDING DEPOSITION
GUIDELINES

CONTESTED CASE NAME: *In re Hopi Reservation HSR*

HSR INVOLVED: *Hopi Reservation*

DESCRIPTIVE SUMMARY: Guidelines for the conduct of depositions

NUMBER OF PAGES: 5

DATE OF FILING: November 30, 2017

1. Scheduling

The parties shall diligently schedule depositions. The trial shall not be continued due to a party's failure to act diligently.

The scheduling of depositions should commence as soon as practicable. The party seeking a deposition shall provide notice of the deposition to the Court-approved mailing list for

1 this contested case at least thirty (30) days before any deposition. The parties have agreed that
2 counsel for the litigant defending a deposition will accept service of subpoenas for testimony
3 and/or the production of documents on behalf of its witnesses.

4 Before noticing a deposition, the noticing party must consult by email with counsel for
5 the United States, the Hopi Tribe, the Navajo Nation, Salt River Project, Arizona Public
6 Service Company, LCR Coalition, Arizona State Land Department, City of Flagstaff, and
7 Atkinson Trading Company to schedule depositions at mutually convenient times and places.
8 That some counsel may be unavailable shall not, however, in view of the number of attorneys
9 involved in this litigation, be grounds for deferring or postponing a deposition if at least one
10 attorney reasonably knowledgeable about the case who represents the party desiring to
11 participate in the deposition is able to attend.
12

13 Deposition discovery will be coordinated so that only one deposition for each witness is
14 necessary in any sub-proceeding. Depositions of expert witnesses shall occur in Albuquerque,
15 New Mexico and in Phoenix or Scottsdale, Arizona. Depositions of Hopi lay witnesses shall
16 occur in Moenkopi. When possible, depositions will be scheduled in groups of consecutive
17 days to minimize travel. Counsel for the Hopi Tribe shall maintain a master calendar of
18 the depositions scheduled and update and circulate the calendar among counsel for the United
19 States, the Navajo Nation, Salt River Project, Arizona Public Service Company, LCR
20 Coalition, Arizona State Land Department, City of Flagstaff and Atkinson Trading Company.
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23 As a general rule, no witness should be deposed on the same subject more than once in
24 any sub-proceeding of this contested case. Second depositions in the same sub-proceeding on
25 new subject matter shall be permitted only upon consent of the parties or an order of the Special
26 Master issued for good cause shown. Witnesses who will testify in both the Past and Present
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1 Water Use sub-proceeding and the Future Water Use sub-proceeding may be deposed a second
2 time in the Future Water Use sub-proceeding.

3 **2. Time Limits for Depositions**

4 The presumptive limit for lay witnesses is four (4) hours. The presumptive time limit for
5 expert witnesses is seven (7) hours. The presumptive limits do not include the time the
6 litigant(s) defending the deposition may use to ask questions. The parties taking a deposition
7 shall divide the presumptive time period among themselves. The parties may agree to extend
8 the time for a deposition without prior approval of the Special Master or the Court.
9

10 **3. Notice of Intent to Attend a Deposition**

11 To allow counsel to make arrangements for adequate deposition space, counsel who intend
12 to attend a noticed deposition should advise counsel for the noticing party at least ten (10) days
13 prior to the deposition, if feasible.
14

15 **4. Conduct**

- 16 a. Examination. Counsel should cooperate so examinations by multiple attorneys do
17 not exceed the allotted time provided.
18
- 19 b. Filing of Depositions. The noticing party is responsible for assuring that the
20 original transcript is filed with the Arizona Department of Water Resources in
21 accordance with Rules for Proceedings Before the Special Master, § 9.08[5].
22
- 23 c. Objections and Directions Not to Answer. Any objection made at a deposition shall
24 be deemed to have been made on behalf of all other parties. All objections, except
25 those relating to form and foundation, are preserved. Absent a question of privilege,
26 or an extraordinary circumstance, a witness should not be instructed not to answer
27

1 questions. Speaking objections are not allowed. Counsel conducting the deposition
2 may ask objecting counsel to explain the basis for an objection to form or
3 foundation.

4 **5. Marking of Exhibits**

5 Exhibits shall be marked sequentially and referred to by the unique bates number assigned
6 the document. Extra copies of documents not previously marked as an exhibit should ordinarily
7 be provided to all counsel and the deponent. All counsel shall be responsible for bringing their
8 own copies of previously marked exhibits to depositions.
9

10 **6. Disputes During Depositions**

11 a. Disputes between the parties that arise during a deposition should be
12 addressed to the Special Master.

13 b. Immediate Presentation. Disputes arising during depositions that cannot be
14 resolved by agreement and that, if not immediately resolved, will significantly disrupt
15 the discovery schedule or require a rescheduling of the deposition, should be presented
16 by telephone to the Special Master.
17

18 **7. Expedited Procedures for Discovery Disputes.**

19 If a discovery dispute cannot be resolved by a meet and confer, the moving party shall
20 notify the judicial assistant for the Special Master requesting a telephonic conference. The
21 telephonic conference shall be set as soon as reasonably possible. Each disputing party shall
22 submit no more than a one page letter explaining the issue and its position at least 72 hours
23 before the telephonic conference.
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8. Stipulations

The parties may, by mutual agreement, depart from any provision of these guidelines so long as the deadlines established by the Special Master are honored.

9. Costs

Each party shall bear the costs associated with the deposition of its own witnesses, including the witnesses' costs for travel and lodging and costs of preparation for and appearance at the deposition.


Susan Ward Harris
Special Master

On November 30, 2017 the original of the foregoing was mailed to the Clerk of the Apache County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for the Little Colorado River Adjudication Civil No. 6417-203.


Barbara Brown